INS Reporter

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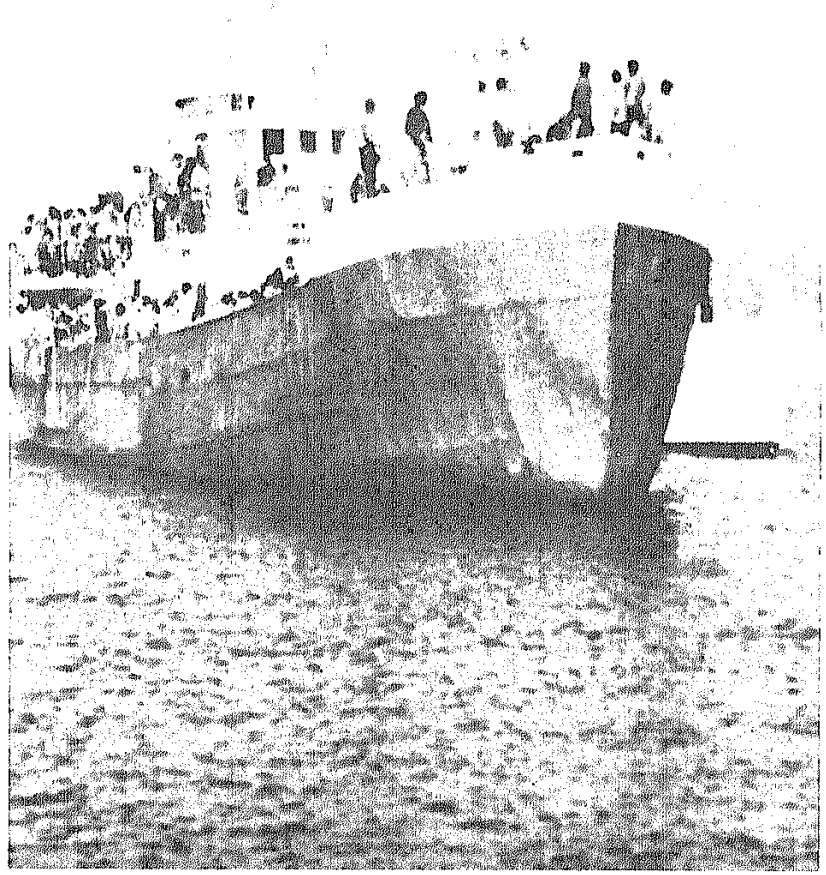

Proposed Omnibus Immigration Control Act
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INS Reporter

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United States Department of Justice
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Immigration and Naturalization Service
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Cover: During the period April 21-October 10, 1980, the Mariel boatlift brought more than 125,000 Cuban nationals to U.S. shores on more than 2,000 vessels. Although most of the boats making the trip from the U.S. to Cuba to pick up Cuban nationals were small craft, carrying approximately 30-50 passengers, there were a number of larger vessels which brought anywhere from one to three or four hundred Cubans at one time.

Proposed Omnibus Immigration Control Act

On October 20, 1981, President Reagan's legislative proposals for immigration reform were transmitted to the President of the Senate and the Speaker of the House of Representatives by the Attorney General. The proposed legislation, entitled "Omnibus Immigration Control Act," which contains major changes in current immigration law, includes the following Titles:

TITLE I: Temporary Resident Status for Illegal Aliens

TITLE II: The Unlawful Employment of Aliens Act of 1981

TITLE III: Cuban/Haitian Temporary Resident Status Act of 1981

TITLE IV: The Fair and Expeditious Appeal, Asylum and Exclusion Act of 1981

TITLE V: The Immigrant Visas for Canada and Mexico Act

TITLE VI: The Temporary Mexican Workers Act

TITLE VII: The Immigration Emergency Act

TITLE VIII: The Unauthorized Entry and Transportation Act

TITLE IX: The Labor Certification Act

TITLE X: The Emergency Interdiction Act

Following is the covering letter sent by the Attorney General to the Congress describing each of the ten Titles contained in the legislation:

. . . The history of America has been in large part the history of immigrants. Our nation has been overwhelmingly enriched by the fifty million immigrants who have come here since the first colonists. For nearly our first century and one-half as a nation, the Congress recognized our need for new arrivals by imposing no quantitative restrictions on immigration. Since 1921, however, the government and our people have recognized the need to control the numbers of immigrants and the process by which they enter our country.

In recent years our policies, intended to effect that necessary control of our borders, have failed. Last year, the number of immigrants legally and illegally entering the United States reached a total greater than any year in our history, including the era of unrestricted immigration.

This bill represents a comprehensive and integrated approach to immigration. This legislation is premised upon the fact that there are between three and six million illegal aliens in this country and their numbers are continuing to grow from one-quarter to one-half million each year. Something must be done.

The following titles of this bill are designed to curtail illegal immigration:

TITLE I: Temporary Resident Status for Illegal Aliens

TITLE II: Unlawful Employment of Aliens Act of 1981

TITLE VI: The Temporary Mexicen Workers Act

TITLE IX: The Labor Certification Act.

Together, these four proposals should substantially reduce illegal immigration by expanding opportunities to work lawfully in the United States and by prohibiting the employment of illegal aliens outside of these programs.

The "Temporary Resident Status for Illegal Aliens" bill would permit illegal aliens, who were present in the United States prior to January 1, 1980, and who are not otherwise excludable, to apply for the new status of "temporary resident." This status would be renewable every three years, and after a total of ten years of continuous residence, those residents would be eligible to apply for permanent resident status if there were not other reasons to exclude them and they could demonstrate English language ability.

The United States has neither the resources, the capability, nor the motivation to uproot and deport millions of illegal aliens, many of whom have become integral members of the community. By granting limited legal status to the productive and law-abiding members of these communities, this nation will acknowledge the reality of the situation.

"The Unlawful Employment of Aliens Act" would prohibit employers of four or more employees from knowingly hiring illegal aliens. Civil fines would be assessed for each illegal alien hired and injunctions would be authorized against employers who follow a pattern or practice of hiring illegal aliens.

"The Temporary Mexican Workers Act" establishes a two-year program for the admission of nationals of Mexico for employment in jobs for which there is a shortage of domestic workers. The jobs could be in any field, skilled or unskilled, provided that there is a lack of available labor. Since the program is a pilot project and is intended as a test, it would be limited in time to a two-year period, and limited in size to 50,000 workers per year.

Under the provisions of "The Labor Certification Act," the temporary Mexican workers who will come to the United States, would be excluded from jobs in states where it was certified that there was an adequate supply of American workers. The existing H-2 temporary worker program would continue to operate.

During the trial period, this experimental program would be evaluated for its impact on American workers, the feasibility of enforcing the program's restrictions, and the overall benefit to the United States.

Mass migrations of undocumented aliens to the United States are a recent phenomenon. They are also a phenomenon for which the nation is woefully ill-prepared, and the consequences of our unreadiness have been disasterous.

The 1980 Mariel boatlift brought a wave of 125,000 Cubans to the beaches of south Florida. Among those persons were criminals and the mentally ill, some of whom were forcibly expelled by Fidel Castro. Notwithstanding its obligations to do so under international law, the Cuban Government has refused to allow these individuals to return to Cuba. Most of the Cubens have been resettled through the efforts of private and public agencies.

There is also a continuing migration to Florida of undocumented aliens from Haiti and elsewhere. Although the government of Haiti is willing to accept the return of Haitians deported by the United States, exclusion proceedings have been blocked by time-consuming judicial challenges to Immigration and Naturalization Service proceedings. While the foreign policy character of the Cuban and Haitian migrations differs, the domestic impact on our local communities and on the administration of our immigration laws is the same.

We must prevent another Mariel. In addition, we must act to curtail the ongoing arrivals of undocumented aliens to these shores in violation of our laws. Finally, we must deal with the recent legacy of those Cubans and Haitians who are already here.

The following titles of this bill were developed to provide adequate legal authority to deal with future migrations of undocumented aliens:

TITLE III: Cuban/Haitian Temporary Resident Act of 1981

TITLE IV: The Fair and Expeditious Appeal, Asylum and Exclusion Act of 1981

TITLE VII: The Immigration Emergency Act

TITLE VIII: Unauthorized Entry and Transportation Act

TITLE X: The Emergency Interdiction Act

"The Cuban/Haitian Temporary Resident Act of 1981" would repeal the Cuban Refugee Adjustment Act of 1966 so that undocumented Cubans will not be eligible for adjustment of status upon completion of one year of physical presence in the United States.

This proposal would allow most of the undocumented Cuban and Haitian entrants to regularize their status by applying for a new "temporary resident" status. After five years of continuous residence in this country, such Cubans and Haitians could apply for permanent residance, providing they were self sufficient, had minimal English language ability, and they were not otherwise excludable.

"The Fair and Expeditious Appeal, Asylum and Exclusion Act of 1981" grants the United States the authority to conduct expedited proceedings with respect to undocumented aliens encountered at our borders and ports of entry, and at points outside the territorial limits of the United States. Presently, an alien who enters the United States without inspection can submit his asylum request and remain in the United States while his asylum request winds its way through the labyrinth of administrative and judicial channels. Thus, there is an incentive for him to enter the United Stetes without inspection.

Current exclusion proceedings are prescribed by section 236 of the Immigration and Nationality Act (INA). That section provides for a hearing before an immigration judge and requires that a complete record of the testimony and evidence be kept. Section 292 of the Act provides right of counsel (at no expense to the government) for any alien in an exclusion proceeding. Under 8 C.F.R. 236.2, the immigration judge must advise the alien of his right to counsel of his choice and of the availability of free legal services. A decision by the immigration judge that the alien is excludable is appealable to the Attorney General under section 236(b). The Board of Immigration Appeals (BIA) was created by the Attorney General administratively to heer such appeals (8 C.F.R., Part 3). Under 8 C.F.R. 236.7, the alien has 13 days after a written decision of exclusion is mailed to file an eppeal with the BIA. An appeal from an oral decision of exclusion must be taken immedietely after the decision is rendered. On request, the BIA must schedule oral hearings on the appeal. BIA decisions must be issued in writing. Under section 106(b) of the Act, an alien under a final order of exclusion by the BIA may obtain judicial review only by habeas corpus proceedings.

"The Fair and Expeditious Appeal, Asylum and Exclusion Act" will streamline those proceedings when an alien cannot present any documentation to support a claim of admissibility. Under this proposal the initial questioning of a particular individual would be conducted by a trained Immigretion end Naturalizetion Service asylum officer. The examination would be orel and no transcript would be made of it. In most cases involving undocumented aliens, the examining officer would make an immediate decision to exclude the alien. There would be no right to an administrative appeal. The removal or return of the alien to his home country would be accomplished as soon as possible.

"The Unauthorized Entry and Transportation Act" is based on the December 19, 1980 decision of the United States District Court for the Southern District of Florida. In the case of *United States* v. *Anaya, et al.*, No. 80-231-CR-EPS, the court dismissed the indictment of persons who were charged with unlawfully bringing undocumented Cuban aliens into the United States in violation of section 274 of INA. The court held that section 274 does not apply to instances in which persons immediately present undocumented aliens to Immigration and Naturalization Service officials. This decision has prevented any criminal prosecutions of persons involved in bringing in undocumented aliens during the Mariel boatlift.

The result of the holding is that the United States does not have an effective criminal sanction against such conduct.

The *Anaya* case is in the process of eppeal. Nevertheless, there is a threat of immediate harm that might arise from the lack of an effective criminal penalty for bringing undocumented aliens to our country and taking them directly to the Immigration end Naturalization Service. Therefore, this proposal would amend the seizure and forfeiture provisions for conveyances involved in violations of section 274.

"The Immigration Emergency Act" would permit the President to declare an "immigration emergency" to enable the United States to respond to the actual or threatened mass migration of visaless aliens to the United Statea. This proposal would amend the Immigretion and Nationality Act by adding new sections 240a through 240e (8 U.S.C. 1230a through 8 U.S.C. 1230e). This legislation would enable the federal government to respond more effectively to future mass migrations. One of the ways the legislation

seeks to do this is by prohibiting residents of the United States from aiding aliens in their efforts to enter the United States. The Mariel boatlift also demonstrated that in certain circumstances United States residents may be willing to lend their assistance even though the aliens may not be entitled to admission to the United States.

Several of the provisions in this Act are designed to give law enforcement authorities the power to prevent United States residents from transporting visaless aliens to the United States. Section 240B(a) authorizes the President to impose travel restrictions to a designated foreign country or area. Any conveyance under the care, custody or control of a United States resident would be prohibited from going within a specified distance of the designated foreign country or area unless prior permission has been obtained. Furthermore, section 240B(b)(1) authorizes the President to close harbors, airports, or roads which may be used by persons seeking to bring aliens to the United States. The purpose of this provision is to enable law enforcement authorities to prevent, for example, the departure of vessels from a harbor. It is obviously easier to restrict boats in a harbor than it is to try and intercept them once they are on the high seas. Effective enforcement may thus require that vessels be prevented from reaching open waters where they would be able to scatter and avoid detection. Persons removing vessels from the harbor without permission would be subject to arrest and criminal penalties.

There are also important reasons for not attempting to rely on existing emergency legislation. While the International Emergency Economic Powers Act, (IEEPA), 50 U.S.C. 1701 *et seq.*, gives the President broad powers and could conceivably be invoked in a situation where there is an actual or threatened mass migration of visaless aliens to the United States, to exclusively rely on IEEPA would be unsatisfactory.

Under IEEPA, an emergency can be declared only when there is "any unusual and extraordinary threat . . . to the national security, foreign policy, or economy of the United States." It is conceivable that some situations which would merit the declaration of an immigration emergency, would also meet the criteria of IEEPA. However, there are other situations which would justify the declaration of an immigration emergency but which would not clearly be a threat to the national security, foreign policy or economy of the United States, and thus the provisions of IEEPA could not be invoked.

While IEEPA would authorize some of the actions which could be pursued under this immigration emergency legislation, such as the travel restrictions, it probably would not authorize such procedures as those designed to expedite exclusion and asylum claims, the detention of aliens pending deportation proceedings, and the interdiction of aliens coming to the United States. IEEPA was primarily designed to regulate international economic transactions and not to control noneconomic aspects of international intercourse.

IEEPA gives the President greater powers than would be needed to take care of an immigration emergency. IEEPA was drafted broadly so as to encompass a wide range of situations which would threaten the national security, foreign policy or economy of the United States. An immigration emergency, on the other hand, is a limited type of emergency for which specific powers can be delineated to respond to the situation. The public and the judiciary would more readily understand and uphold actions taken in the course of an immigration emergency if there is a specific statute authorizing such actions, rather than if supports for those actions must be sought from the statutory provisions of legislation such as IEEPA, which is not tailored to the precise problems that would arise during an immigration emergency.

The "Emergency Interdiction Act" states that the President can enter into agreements with foreign countries for the purpose of preventing illegal migration to the United States. Under such an agreement, the Coast Guard could stop a foreign flag vessel on the high seas if there is reason to believe that the vessel is destined for the United States and carrying undocumented aliens who are not entitled to enter the United States.

The basic legal framework governing immigrant admissions to the United States was established by the 1965 amendments to the Immigration and Nationality Act. These amendments retained the policy of numerically restricting certain preference categories of immigration. For the first time in our history, immigration from Western Hemisphere countries was limited, to 120,000 annually. Annual per country ceilings of 20,000 were extended to the Western Hemisphere in 1976.

With regard to refugee admissions, the Congress first dealt comprehensively with the question only recently. In the Refugee Act of 1980, Congress prescribed a uniform definition of "refugee" without geographic or ideological limitation, and established a process for the annual determination of refugee admissions by the President, after consultations with Congress.

Imposition of country ceilings of 20,000 annually, in conjunction with the new preference system and labor certification requirements added by the 1965 amendments, resulted in a drastic reduction in immigration from Canada and Mexico. The ceiling on immigration from the United States' closest neighbors should be increased. "The Immigrant Visas for Canada and Mexico Act" would create separate annual ceilings for numerically restricted immigration from Mexico and Canada raising the totals from the present 20,000 to 40,000 for each country. The unused portion of either country's allotment would be available to citizens of the other nation. The numerically restricted immigration from other countries of the world would be adjusted so as not to be affected by this change.

Under "The Immigrant Visas for Canada and Mexico Act," any unused visas in Mexico or Canada in a fiscal year would be allotted to the other country during the next fiscal year. The overall limitation on immigration from the rest of the world would be reduced from 270,000 to 230,000. Historically, the demand for immigrant visas by nationals of Mexico has exceeded the demand by nationals of Canada. For ex-

ample, in fiscal year 1978 there were 17,000 immigrants from Canada as opposed to 92,000 from Mexico. These figures include both numerically and non-numerically limited immigrants. Based on this, we would assume that Mexico would use all of their 40,000 visas in the first year and Canada would use no more than 15,000 to 20,000 visas. In subsequent years the unused visas for Canada would be allocated to Mexico and would probably result in 60,000 to 65,000 visas being available each year to Mexico. Essentially there would be no increase in immigration from Canada and there would be a substantial increase in immigration from Mexico.

"The Omnibus Immigration Control Act" will allow the United States to continue as a nation that is open to immigration and that does its share to assist and resettle the refugee. This bill is necessary if this nation is to continue to provide for our people, while welcoming others who desire to contribute to this nation's continuing experiment in liberty. ■

Editor's Note: Following submission of these proposals to Congress, extensive hearings were held by the Senate Subcommittee on Immigration and Refugee Policy, under the Chairmanship of Senator Alan Simpson, and the House Subcommittee on Immigration, Refugees and International Law, under the Chairmanship of Congressman Romano Mazzoli. Hearings on the various elements of the proposed legislation will resume when Congress reconvenes January 25, 1982. It is anticipated that a final version of the legislation will reach the floor of the Congress sometime during the Spring.

The Cuban Boatlift

By Edward K. Burns
Immigration Inspector
Inspections Division
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It began on April 21, 1980 at 6:30 p.m. The small ship "Elmer" put into port at Key West, Florida, at dusk with 30 Cuban aliens aboard. Two hours later "Dos Hermanos" brought in two dozen more and just before dawn, "Big Baby" sailed in carrying over 200 Cuban passengers. The Cuban Boatlift had begun.

It was unexpected, and unprecedented. Never had there been such a massive wave of intending immigrants boldly arriving on our shores unannounced, unscreened and, uninvited. In the succeeding five months, flotillas of pleasure boats, shrimp boats and small craft of all kinds streamed back and forth across the 90 miles of the Florida Straits bringing, by September 26, 1980, an astounding 125,000 Cubans to United States shores on 2,020 boats.

What stimulated this sudden surge of people to our country? A look back at the events preceding the 1980 Cuban Boatlift will provide the answer.

Background

Many Cubans since 1979 had sought asylum at the Peruvian and Venezuelan Embassies in Havana. In early April 1980, Cuban guards posted outside the Peruvian Embassy were withdrawn as a result of the death of a guard shot during an attempt by Cubans to crash into the Embassy compound.

Thereafter, the Cuban Government announced that any who wished to seek Peruvian visas would be free to leave Cuba. Within days, more than 10,000 people swarmed into the Peruvian Embassy compound. In cooperation with an international effort to resettle these people, the U.S. Government on April 14 agreed to admit up to 3,500 Cuban refugees from the Peruvian Embassy.

An airlift from Havana to Costa Rica began on April 14. Some 1,000 refugees had been airlifted before operations were suspended on April 18, when the Cuban Government stated that only flights to countries of final destination would be allowed. Finally, on April 20, the Castro regime announced that all Cubans wishing to go to the U.S. were free to board boats at the port of Mariel, 20 miles from Havana. Within 24-hours of that announcement, numerous small boats left the U.S. for Cuba to pick-up relatives and others at Mariel.

INS Response

Needless to say, INS was faced with an extreme challenge to come up with an appropriate response to this unprogrammed emergency. What legal action should be taken? Turn them back? Defer inspection? Detain them? Are they admissible to the U.S.? What does the immigration law say?

With many boats reported on the water streaming toward the United States, it was necessary that INS first respond to the immediate problem, that of receiving the aliens and completing the preliminary processing as quickly as possible. Not knowing how many people would be coming, it was important that INS respond with a streamlined, efficient, and humane operation, which fully protected the rights of the aliens while at the same time meeting the statutory requirements of the immigration laws.

When the initial group of Cubans arrived on April 21, there was one Immigration Inspector on duty at Key West, Florida. INS immediately detailed additional officers to that location to assist. From the outset, it was evident that these individuals would have to be processed as quickly as possible and moved on to Miami for more in depth screening, in order to avoid a "logjem" at Key West.

Within a short time, 100 Border Patrol Officers and another 50 Immigration Inspectors and Detention Officers were detailed to assist in enforcement and inspection duties in the South Florida area. Aircraft, vehicles and communications equipment needed to support the operation were moved into the area. And, the Regional Commissioner of the

Southern Region was immediately dispatched to Miami to assume direct command of the program.

Most of the first wave of arrivals had close family ties in the Miami area. Thus, it was decided that where an entrant had a relative or a willing sponsor, he or she could be processed by INS and paroled to that relative or sponsor for a period of 60 days, with authorization to seek employment.

As the boatlift continued, it became evident that additional processing sites would be needed since there were many aliens arriving from Cuba who had no relatives in the U.S. There were more single males, more who needed medical attention, and an inordinate number of homosexuals. It was apparent that Cuban authorities were deliberately splitting family units and forcing boat captains to accept large numbers of nonrelatives for every family unit taken on board.

Criminal Background

The Service, and the many other government agencies involved in this program, was dismayed to find that many of the Cubans had been recently released from a variety of institutions—many had criminal records.

When initial screening indicated a criminal background, the subjects were referred to a secondary processing officer who would, based on a more in depth screening, determine whether the alien should be detained. That officer's judgment was confirmed or overruled by a review panel.

At one point, the number initially identified as having a criminal record amounted to approximately 24,000 persons. However, after careful screening by INS officers, many were found to have committed petty offenses, such as stealing rationed food, tobacco or clothing to wear, or had been jailed for alleged political crimes. These were not detained. It should be pointed out that of primary consideration in determining whether an individual should be released was whether such release would be harmful to the public. Again, each decision to detain or release was reviewed by a panel of at least three supervisory officers.

Of the 24,000, some 1,800 Cubans were detained in Federal Correctional Institutions on the basis of having admitted or been convicted of committing serious crimes. Some of the criminal acts committed by the detainees included robbery, rape, homicide, arson, assault, burglary, and prostitution. And, included in the group were chronic criminal offenders.

This large vessel arriving at dockside in Key West, Florida, carried several hundred passengers. Upon arrival, the Cubans underwent preliminary processing by INS before onward transportation to the permanent processing center at Eglin Air Force Base in Fort Walton Beach, Florida.

Additional Processing Facilities

Each day, the number of entrants grew by quantum leaps. For example, in early May 1980, 5,600 persons arrived in a single day on 132 boats. Also, minor scuffles and other disorders broke out among the large group of people, requiring the Governor of Florida to activate the National Guard to maintain order at the site. Thus, one of the first problems the Service had to address was the need for additional processing centers as the facilities within the Miami area became overtaxed.

The search for an appropriate site was coordinated with the Federal Emergency Management Agency (FEMA), which had responsibility for locating appropriate facilities. It was decided that Eglin Air Force Base in Fort Walton Beach, Florida, would be the first site established for processing Cuban entrants. It opened on May 3, 1980. Within the next four weeks, centers also were opened at Fort Chaffee, Arkansas; Fort Indiantown Gap in Pennsylvania; and Fort McCoy in Wisconsin.

In staffing Eglin, the Service sought officers who had prior experience in the Indochinese Refugee Program of 1975, and who spoke Spanish. One such officer was Wayne Joy, Regional Planning and Evaluation Officer, Dallas, Texas, who was designated Officer in Charge at Eglin. He was able to provide a staffing plan for a processing center which was based on a camp population capacity of 10,000 aliens, with Service employees working two 12-hour shifts, targeting for an output of 1,000 applicants processed daily. His plan, in fact, was used as the prototype for the other three camps, which eventually were to receive almost 63,000 Cuban aliens for processing and sponsorship.

Boat Fines

Aside from opening new processing centers and staffing them, we were also faced with the problem of dealing with the owners and boat captains who were transporting these Cubans to the United States in violation of law.

Section 273 of the Immigration and Nationality Act makes it unlawful for a person to bring any alien to the U.S. who does not have an unexpired visa. The penalty for doing so is a fine of $1,000 for each alien so brought, paid to the Collector of Customs. Therefore, Notices of Intention to Fine under this section were served on 1,954 boat owners. As of mid-November 1981, $287,000 in fines had been collected and 531 cases had been referred to the U.S. Attorney for collection.

In addition, Section 274 of the Act makes it unlawful for a person to bring into or land in the U.S. any alien not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the U.S. under the terms of this Act. The penalty under this section is a fine not exceeding $2,000 or imprisonment for five years, or both, for each alien. This section of law also provides for the seizure and forfeiture of any vessel used in violation of this section. To date, the U.S. Attorney has authorized the prosecution of 872 cases of which 262 persons are under indictment.

It was found that many of the vessels were ill-equipped, lacking radio equipment, sufficient life vests, etc., some were transporting excessively large numbers of people far beyond the capacity of the boat, thus endangering the lives and safety of their passengers. Some captains were charging U.S. residents sums of money to bring their relatives here.

Although boat owners and captains generally were conceded to be acting on humanitarian principles, nevertheless, immigration laws were being violated, and lives endangered by improperly equipped or overloaded vessels. The Service had no desire to punish those seeking to come to the U.S., but simply wished to deter the continued departure of vessels to Cuba for the purpose of transporting aliens to this country unlawfully.

Refugees or What?

One of the most frequently asked questions concerned the status of these Cubans under U.S. immigration law. Are they refugees or what?

Under the Refugee Act of 1980, the decision to invite large numbers of refugees to the U.S. must be made through consultation between the Executive Branch and the Congress. Subject to the numerical limitations agreed to in that consultation, the Attorney General may admit refugees pursuant to such regulations as he may prescribe. Under those regulations, aliens who meet the definition of refugee set forth in Section 101(a)(42) of the Immigration and Nationality Act, are identified abroad and cleared for admission to the United States. Therefore, aliens who come to the U.S. outside the refugee admission procedures established by regulation are not considered refugees.

It was determined that those Cubans with relatives or sponsors in the United States would be paroled into the country for a 60-day period under the Attorney General's parole authority contained in Section 212(d)(5) of the Act. Others would be sent to processing camps until sponsors could be located.

Asylum

The Refugee Act of 1980 also provides that any alien in the United States or who arrives at a port of entry, may apply for asylum if he/she can demonstrate a well-founded fear of persecution should they return to their country of origin. Virtually all of the Cuban arrivals asked for asylum.

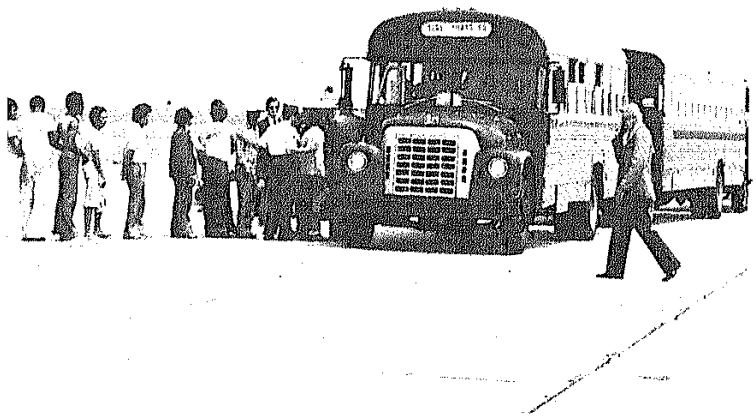
In addition to the Cubans, Haitian nationals have been flocking to our shores since 1979, also seeking asylum. Haitians seeking asylum number somewhere between 15 and 20 thousand. However, the Refugee Act never contemplated a sudden massive influx of persons seeking asylum. The procedures dealing with asylum require lengthy examinations on a case-by-case basis and a good number, in any event, would not qualify for admission under that category. Therefore, it was determined that a different course of action would be necessary to regularize their status.

Cuban-Haitian Entrants Status

To meet this extraordinary situation, President Carter proposed legislation which would regularize the status of Cuban-Haitian entrants. Meanwhile, all

A group of Cubans arrive by air from Miami enroute to the INS processing facilities at Eglin Air Force Base. Foleg representatives who acted d in the processing procedures.

The Cubans were then bussed to the INS facility where they underwent the appropriate INS and Public Health screening procedures before being released to relatives or other sponsors.



Cubans who arrived in the U.S. during the period April 21-June 19, 1980 and were in INS proceedings, and all Haitians who were in INS proceedings as of June 19, 1980, were granted the classification, "Cuban-Haitians Entrants (status pending)." The cut-off date for Cuban-Haitian Entrants status was later extended to October 10, 1980. Their parole into the country was authorized until January 15, 1981, to provide Congress time to act on the legislation. Permission to seek employment was also authorized.

Legislation was introduced in the 96th Congress in June 1980; however, no action was taken on the proposal before adjournment in December. Therefore, it was necessary to extend the parole for Cuban-Haitian entrants to July 15, 1981, so that legislation in their behalf might be considered by the new Congress. Such legislation is included in the Omnibus Immigration Control Act proposed by President Reagan and forwarded to the 97th Congress on October 20, 1981. This legislation also extends the cut-off date for Cuban-Haitian Entrants status to January 1, 1981.

Authority to Detain

Due to lack of sponsorship in some cases or a criminal background or other serious violations of law in other cases, the Service found it necessary to detain certain groups either in processing camps, INS facilities, or Federal Correctional Institutions. Under Section 235(b) of the Immigration and Nationality Act, the Attorney General has authority to detain any arriving alien not "clearly and beyond a doubt entitled to land" pending a determination of admissibility to the United States. This authority has been upheld by the courts.

As mentioned earlier, those aliens who had relatives or other sponsors were released from INS custody following completion of the inspection process. Those without sponsors, approximately 400, continue to be held in the Fort Chaffee, Arkansas, processing camp until appropriate sponsorship can be found. Long-time policy of the Service in asylum claims requires that there be a qualified sponsor to whom the alien can be released. This is to insure their care and maintenance while the asylum claim is being considered. Also, it provides the Attorney General with certain control over the whereabouts of the individual until his/her legal status has been clarified.

Unaccompanied Minors

Another surprising development was the discovery of a large number of unaccompanied minors among the Cubans arriving each day. These children were under 18 years of age, with some as young as 13 and 14 years old; some with relatives in the U.S., others without.

It was of primary concern by all agencies involved in this program to move as quickly as possible to identify all unaccompanied minors held in the various camps, and to arrange for their release either to relatives or to state agencies engaged in caring for homeless children. The humanitarian concerns for the welfare of these children required that they be removed from the environs of the camps to an atmosphere of permanency and well-being.

Thus, INS proceeded to identify and process all unaccompanied minors, expeditiously. The Office of Refugee Resettlement of the Department of Health and Human Services, in turn, proceeded to expedite family reunification of the minors, as well as arrange for appropriate placement of those without relatives. The U.S. Catholic Conference and its affiliated local agencies assisted in this effort. As a result, some 400 unaccompanied minors were successfully reunited with relatives or placed in state-run facilities.

Mental Patients

Lastly, we were further dismayed to find that also included among the arriving Cubans were some who were suffering from mental disorders. All entrants were required to undergo medical screening by the U.S. Public Health Service. As a result, 68 individuals were identified as mentally unstable, requiring hospitalization.

The majority of these, 50, are continuing medical observation at St. Elizabeth's Hospital in Washington, D.C., under the direction of the U.S. Public Health Service. The remaining 18 either were found medically releaseable or are being observed at other appropriate medical facilities.

Conclusion

The problems arising during the first months of the boatlift were as numerous and as varied as the Cubans them-

selves. It required the teamwork of many Federal agencies to respond to these problems and to resolve them as quickly as possible. Considering the large number of Cubans arriving in a short span of time, it can be said that all Federal agencies involved responded with exceptional dedication, cooperation and efficiency in meeting the existing emergency. ■

Marriage Fraud

By David Dec
Criminal Investigator
Eastern Regional Office
Burlington, Vermont

> WANTED: U.S. citizen willing to marry an illegal alien and sign immigration papers for him. Cohabitation after marriage is not required. You may, however, be asked to swear to an immigration officer that you and the alien are living together as man and wife. Cost of your services is negotiable.

Since the enactment of the Immigration and Nationality Act, the temptation to enter into a fraudulent marriage has become irresistible to many aliens. Not only does marriage to a United States citizen exempt an alien from having to obtain a labor certification, but it also enables the individual to obtain permanent resident status without being subject to any numerical limitations and the resultant delays. A sham marriage to a legal permanent resident alien is only slightly less attractive because of the preference given to beneficiaries of petitions filed by these spouses.

The majority of illegal aliens in this country are either employed or seeking employment. Because an increasing number of employers are requring employees to show documentary proof of United States citizenship or permanent resident status, the illegal alien must either purchase counterfeit documents or become a permanent resident. Since most illegal aliens cannot qualify for an immigrant visa or for adjustment of status, and many find the complexities of a labor certification fraud intimidating, a sham marriage scheme is particularly appealing. If successful, the alien will be accorded legal status and will be issued the coveted alien registration receipt card. This entitles him to employment without harassment, and to nearly all the benefits accorded United States citizens.

Profile of a Marriage Fraud

For an alien to qualify for permanent resident status through marriage, the individual petitioning for the alien must establish, to the satisfaction of the immigration or consular officer, that he or she is a United States citizen or permanent resident alien, that he or she was free to marry, and that he or she is legally married to the beneficiary. The beneficiary must similarly demonstrate freedom to marry, and proof of a legal marriage to the petitioner. The immigration examiner or consular officer, after reviewing the documents and, in some cases, after interviewing the parties, makes a determination as to whether the relationship is bona fide or not.

There have been attempts to profile fraudulent marriages but it is impossible to do so with any degree of exactitude. Frauds have been found among all ages and nationality groups, religious denominations, and socio-economic strata. There are, however, certain elements that indicate the possible existence of fraud in a relationship. These include, but are not limited to, disparity in the ages of the spouses; divergent ethnic backgrounds; lack of common language; use of witnesses known to be involved in performing such marriages; use of witnesses known to have been involved in other fraudulent marriages; repeated use of one address by a number of seemingly unrelated couples; representation by an attorney suspected of irregular practices; and repeated use of certain suspect notaries public.

Although most marriage frauds take place in the United States, participants may also be sent abroad by the arrangers for the sole purpose of marrying an alien to qualify that person for an immigrant visa. Individuals of modest means or individuals receiving public assistance, who may have never travelled overseas before, and who without explanation marry someone they have just met, may be part of such conspiracies.

Marriage frauds can occur in isolation or as part of well-organized third-party controlled operations. An isolated marriage fraud case may be defined as simply a case where an alien and a United States citizen or permanent resident alien are willing to marry for the sole purpose of helping the illegal alien obtain an immigration benefit. No other individuals are involved in the scheme. The couple enters into the marriage with the mutual understanding that there will be no cohabitation, and that the marriage will be dissolved after the alien legalizes his or her status. Almost all cases involve direct monetary gain for the citizen or legal permanent resident alien who has entered into the arrangement. When the divorce occurs, the alien generally pays for it.

Third Party Arrangers

Sham marriages are commonly orchestrated by third party arrangers who carefully coach the participants in the various roles they will need to play if the alien is to be successful in securing legal status. In some schemes, the third party arrangers employ the services of "runners," who help to provide alien clients and locate prospective spouses. The arranger is the mastermind of the scheme, bears major responsibility for its success or failure, and generally takes a sizeable cut of the monies paid by the alien client.

Modus Operandi of a Marriage Fraud Scheme

Information about marriage fraud possibilities and visa scams constantly percolates through communities of illegal aliens. When an individual alien

makes initial contact with an arranger or one of the parties in his employ, the arranger may have his runner locate a prospective United States citizen spouse, or may locate a prospective spouse himself. The parties to the marriage or, more specifically, the individuals who are paid by the arranger to impersonate them, are directed to take any blood tests required by the state. Sometimes the parties are steered to a doctor or laboratory technician who has knowledge of the scam and is part of the kickback scheme.

Arrangements are then made to obtain the requisite marriage license. Since many United States citizens who enter these schemes are unreliable individuals, they are usually accompanied by the arranger or runner. This person needs to be present because the alien and his spouse-to-be may be meeting each other for the first time and may not recognize each other.

After the waiting period required by the state, the marriage is performed. In many instances, specific clergymen, who are part of the scheme or aware of it, are used. The arranger or runner may be one of the required witnesses; however, in acting as a witness, he or she will frequently use an alias to avoid detection. Almost immediately after receipt of the marriage certificate, the necessary immigration forms are executed and filed. Occasionally the documents are mailed to avoid detection.

Although the arranger's fee is $800 to $5,000, the recruited spouse will generally only receive $100 to $1,500. The runner receives $100 to $500. The alien spouse pays all costs. To assure the continuing cooperation of the recruited spouse, portions of the contracted payments may be withheld by the arranger until such time as the alien successfully attains permanent residence and/or until the divorce is successfully obtained. The business partnership among the marriage participants may last several years.

Stand-in Brides and Grooms, and Imposters

At some point in the scheme, the citizen or legal permanent resident alien spouse may try to extort additional funds from the illegal alien in return for his or her continued cooperation in the scheme, or to prevent the disclosure of the scam to the INS. Frequently, the original participant disappears, or backs out of the arranged marriage. Then the alien or his arranger may procure a stand-in, who forges the original participant's name to any additional documentation needed, and poses as the alien's spouse in any required immigration or consular interview. Use of a stand-in in these circumstances generally costs the alien additional monies, and further exposes him to detection as more and more individuals become party to the fraud.

Another popular variation on the stand-in scheme practiced by arrangers is to use imposters to marry illegal aliens. In this case, the imposter is an individual who enters into a marriage using the identity of another person. The acquisition of another person's identity can be a relatively simple process. In most cases, a birth certificate will satisfy the documentary requirements for establishing United States citizenship. As copies of birth certificates can be obtained at a cost of fifty cents to six dollars, the supply available to any arranger is inexhaustible. The person whose identity is used is seldom aware that his or her birth record was used as part of a sham marriage scheme.

A convicted arranger on one occasion requested the county clerk's office to provide a copy of a birth certificate he planned to use in a marriage fraud scheme. The arranger enclosed five dollars with his request. The cost of a copy of a birth certificate was fifty cents and, rather than return the change, the county clerk's office sent out ten copies of the document. The same birth certificate, therefore, was used in ten different marrieges. Another arranger disclosed that she used her high school yearbook as a source of information to obtain birth records. And a notary public was able to gather data about United States citizen females by filling out income tax forms.

Some professional stand-ins have participated in as many as one hundred marriages. In Chicago, a list was compiled of those whose identities had been used in more than two immigration marriages. Over 500 names are currently on this multiple marriage list. The identity of one individual on the list was used to marry seventeen different illegal aliens, all of whom subsequently filed for an immigration benefit as the spouse of the same United States citizen.

Financial Gain

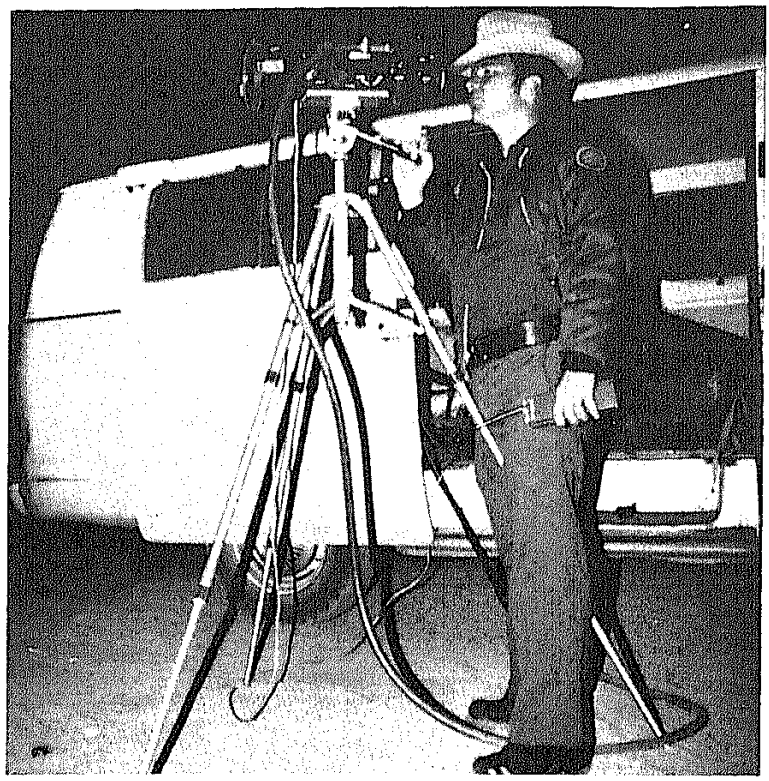
Arranging fraudulent marriages for immigration purposes is a lucrative business. Some rings have become very sophisticated, and many are linked to organized crime. A marriage fraud arranger is usually an individual with a variety of unscrupulous business interests. Arrangers have been known to have an annual income from the sham marriage business alone of over $100,000. A secretary employed by a convicted marriage fraud arranger testified that, on the average, she processed each week the immigration paperwork of twelve illegal aliens who had fraudulently married United States citizens.

Prosecution

Marriage fraud investigations are frequently complicated, time-consuming, and sensitive. The investigator must first determine if the relationship is bona fide and, if not, then determine if there was fraudulent intent and criminality on the part of one or both parties to the marriage. An evaluation must also be made as to whether there was third party involvement in the marriage. When fraud is established, every effort must be made to properly identify all participants, and to determine what role each played and the criminal liability of each.

The INS has successfully prosecuted notaries public, attorneys, ministers of religion, and others involved in these fraudulent activities, and continues to do so. Yet there is growing concern that marriage frauds are common in the alien community and have become an accepted method of entering, remaining, and working in the United States. ■

Technology Helps Patrol the Borders



The infrared vision scope is used by the Border Patrol to detect persons in absolute darkness, without need of a light source.

As the number of aliens seeking to enter the United States illegally continues to mount, the need for better surveillance of our international borders has become critically important. It is essential that every effective means posible be used to help those who bear the responsibility of monitoring the 2,900 miles of border with Mexico and the 4,000 mile Canadian boundary.

Working with limited personnel and within budgetary constraints, the INS Border Patrol is trying to place a greater reliance upon new and sophisticated technology in order to stem the flow of illegal human traffic into this country. To supplement the efforts of its 2,500 member force, electronic sensing devices, which warn of illicit entries, are being utilized, and closed circuit television cameras are replacing agents at certain known crossing spots.

With thousands of men, women, and children attempting to teke advantage of the darkness of night to sneak across the border, the resources of the Border Patrol are under constant strain. To help ease the situation, a variety of electronic "eyes" are being used to spot intruders. Among them is the Forward Looking Infrared Systrm (FLIR) which is used on low flying aircraft to detect infrared reys given off by all objects, including people. The system transmits them to a recognizable imege on a television screen located on the plane itself, and is capable of detecting persons in absolute darkness without the need of a light source.

Another electronic "eye" is the Infrared Scope. The ones presently in use are mounted on a tripod and placed on a high point of ground overlooking an area frequented by illegal border crossers. In the near future, the Infrared Scope will be mounted on a turret in the back of a pick-up truck, which will afford greater mobility.

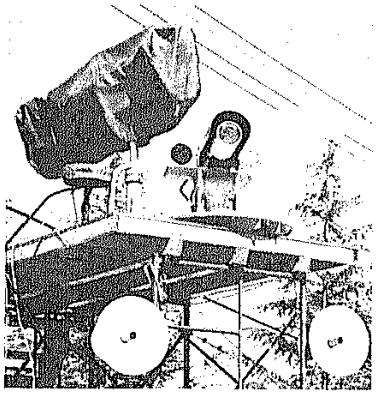
In El Paso, Texas, tests have begun on a low-light level television system which will be used to supplement line-watch activities. It consists of nine cameres which are set up to monitor a specific area. This type of electronic "eye" releases agents for other duties. Closed circuit television is already in use in the Swanton, Vermont, Border Patrol Sector. In addition, electronic sensors, which sound an elerm as vehicles or persons approach, have been implanted in the ground and along roadways, and have become a major key in the detection of unlawful entrants.

In order to cover the vast border area, the Border Patrol, by necessity, must have a high degree of mobility. For this reason, 27 fixed-wing aircraft are currently used for border surveillance end for locating illegal aliens working on farms and ranches.

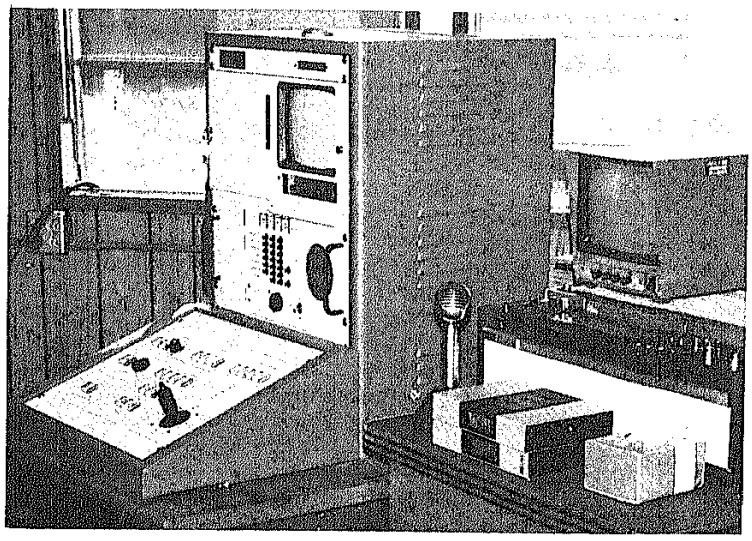
Nine helicopters ere also part of the Border Patrol air arm and give officers a night flying capability. Mounted with speakers and high searchlights, the imposing craft have proven valuable in spotting people attempting entry and in discouraging such attempts. Because of their mobility, they are also useful in deterring the violence thet has become so commonplace in the dark gullies and canyons of the border. Further, they have the capacity to respond rapidly when sensor alarms triggered by border violetors go off.

Motorcycles and all-terrain three wheel cycles have been placed at the disposal of agents end are extremely helpful in the speedy tracking end capture of illegal border crossers. These vehicles are relatively inexpensive to operate and can get up to 50 miles to the gallon.

Along with the new technology, the Border Patrol hes resumed use of an old method to increase its effective-



Low-light television systems also are used to detect persons entering the U.S. illegally. The cameras are placed at strategic points along the border where persons are likely to attempt entry.



An officer located at Border Patrol headquarters monitors via television screen the activities transmitted by the low-light level cameras. Working at a console, the officer is able to control the direction of the cameras and focus on any unusual movement while scanning the terrain.

ness. For the first time since 1955, mounted agents are patrolling the border. Eighteen horses are now in use, including sixteen in the Chula Vista sector. The horses are able to take agents into wilderness areas where motorized vehicles are not permitted or where the terrain makes the use of trail bikes impractical.

Because of their keen hearing and sensitivity, the animals are also helpful in detecting persons hidden in the brush. Interestingly, the presence of a single agent mounted on horseback gives that individual a psychological advantage when confronting a group of illegal aliens. It is worth mentioning that feed for horses is still cheaper than gas—in fact the cost of using horses to apprehend aliens is about one third that required by vehicles.

Engineers are experimenting with a computer simulation model called LINESIM. The system can be fed different information such as the estimated number of aliens in a given area; their projected movement; the number of Border Patrol agents on duty at a specific time and their tactics; the location of sensors; the deployment of air and ground vehicles; communication links; terrain features; and weather conditions. Once all of this data are fed into the computer, INS management, it is anticipated, will be able to evaluate the effect on operations of procedural changes such as the need to relocate sensors or manpower, or the need to use aircraft and ground vehicles before committing funds, personnel and equipment.

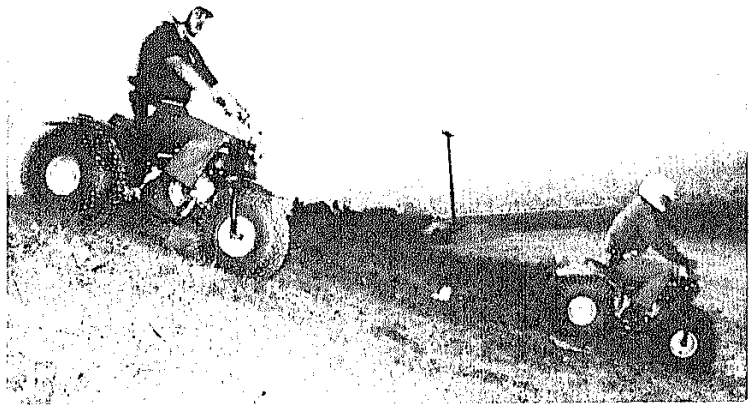
INS researchers have also completed feasibility studies on a detector that recognizes the mechanical wave generated by a heart beat to discover people hidden in vehicles. The same technique may also potentially be used to locate persons concealed in railroad cars, aircraft, ships, and even buildings. Work is underway on a prototype system but further study is required before it can be put to use.

Less complicated devices and new operating strategies are also playing an important role in efforts by the Service to control the flow of illegal border crossers. New fencing has been installed in the Chula Vista area, along parts of the Arizona-Mexico border, and near El Paso, Texas. These are areas where the number of illegal entries is the highest. Although the fencing must be constantly repaired, it does discourage many would-be crossers and funnels illicit traffic to locations where Border Patrol agents have a greater chance of apprehending intruders.

Border Patrol Sector Chiefs are constantly trying new tactics to keep both smugglers and illegal aliens off balance. One tactic which has been used successfully in recent months, is to withdraw agents from the San Clemente, California, checkpoint on Interstate 5, thereby allowing vehicles to proceed without the customary check. After allowing a reasonable time for word to spread that officers were not checking the station, it suddenly was reopened. On one Sunday, officers arrested 362 persons in a four hour period and seized 41 vehicles using this tactic.

At a Texas border point last month, Border Patrol agents were temporarily removed from other duties and were assigned en masse to border crossing areas. During the brief period, while they were totally concentrated on apprehending illegal entrants, nearly 1,400 arrests were made. This is several times the usual number for a similar time span.

Because experienced smugglers and some border crossers are able to monitor radio messages sent by one border patrol station to another, El Centro, California is experimenting with a method of transmitting messages numerically. Digital Communications Systems uses



All-terrain three wheel cycles are being used by Border Patrol Agents in tracking illegal border crossers. These vehicles are relatively inexpensive to operate and can get up to 50 miles to the gallon.

numerical date to relay information which will make it impossible for outsiders to intercept.

The utilization of new methods and "unpredictable" tactics, along with the routine manner of manning the border, has resulted in the arrest of an average of a million illegal aliens in each of the past three years. Nevertheless, people continue to cross the border illegally, drawn by the ease with which they can find work at wages several times above what they can earn in their own countries—assuming work can be found.

The President's legislative proposal submitted to Congress on October 20, 1981, under the "Omnibus Immigration Control Act," contains a number of steps to combat this ever mounting flow of undocumented aliens, including employer sanctions. In support of these proposals the administration also has recommended an increase in Border Patrol resources to provide more effective interior and border enforcement. In the meantime, new techniques and new technology is being tested and, when feasible, implemented to aid in carrying out our responsibilities. ■

Changes in the Regulations

Under Title 8, Code of Federal Regulations, consult:
46 FR 51369, Oct. 20, 1981, Secs. 100; 238.3 & 238.4.
46 FR 54498, Nov. 3, 1981, Sec. 103.1(q).
46 FR 55920, Nov. 13, 1981, Sec. 109.1.
46 FR 56775, Nov. 19, 1981, Sec. 103.1(e).
46 FR 57025, Nov. 20, 1981, Sec. 103.1(q).
46 FR 62647, Dec. 28, 1981, Sec. 238.4.
47 FR 131, Jan. 5, 1982, Sec. 238.3.
47 FR 132, Jan. 5, 1982, Sec. 316a.2.
47 FR 940, Jan. 8, 1982, Secs. 101.3; 101.4; 264.2.
47 FR 942, Jan. 8, 1982, Sec. 204.2(h).

ADMINISTRATIVE DECISIONS

(Due to space limitetions it is possible to print only an Index and Identifying paragraph on each precedent decision. Copies of the decisions may be seen at any local office of the Immigration and Naturalization Service. Copies may also be purchased on a yearly subscription basis ($50. per year, $12. extra for foreign mailing) from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The Decisions will be printed later in bound volume form. Volumes of past Administrative Decisions are on sale at the Government Printing Office in Washington. **Note: Decisions missing from the numerical sequence have not at this printing been released for publication.)**

Number 2876-Matter of Lee. In Visa Petition Proceedings, A-CHI-N-20149. Decided by Reg. Commr., May 8, 1981.

(1) To qualify for nonimmigrant classification as a temporary worker of distinguished merit and ability within the meaning of section 101(a)(15)(H)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i), a beneficiary must be e member of a profession offered a temporary position performing services which require professional skills.

(2) A beneficiary who is a dentist, offered a position practicing dentistry for an indefinite period of time with no specified termination dete has not been offered a temporary position and does not qualify for nonimmigrant classification as a temporary worker of distinguished merit and ability within the meaning of section 101(a)(15)(H)(i) of the Act, 8 U.S.C. 1101(a)(15)(H)(i).

Number 2877-Matter of Alyer. In Adjustment of Status Proceedings, A22 210 207. Decided by Reg. Commr., June 17, 1981.

(1) Since the dependent of a principal elien derives benefits from the principal allen, an applicant for adjustment of status under section 13 of the Act of September 11, 1957 (71 Stat. 642), 8 U.S.C. 1255(b), is ineligible for section 13 benefits if he/she is the dependent of a principal alien ineligible for such benefits.

(2) Where an applicant for adjustment of status under section 13 of the Act of

September 11, 1957, was admitted under section 101(a)(15)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(G)(i), as the immediate family of a principal alien admitted under section 101(a)(15)(G)(i) of the Act, 8 U.S.C. 1101(a)(15)(G)(i), and the principal alien is ineligible for section 13 benefits because he/she did not fail to maintain his/her section 101(a)(15)(G)(i) status while remaining in the United States, the applicant is ineligible for section 13 benefits.

Number 2878-Matter of Lok. In Deportation Proceedings, A31 327 663. Decided by BIA, July 31, 1981.

(1) The lawful permanent resident status of an alien terminates within the meaning of section 101(a)(20) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(20), with the entry of a final administrative order of deportation, *i.e.*, when the Board renders its decision in the case upon appeal or certification or, where no appeal to the Board is taken, when appeal is waived or the time allotted for appeal has expired.

(2) Once a final administrative order of deportation has been entered, barring a reversal on the merits of the deportability finding by an appellate court or administratively upon a motion for reopening or reconsideration, an alien may not thereafter establish eligibility as a lawful permanent resident for relief under section 212(c) of the Act, 8 U.S.C. 1182(c), nor may his domicile in this country from then on be considered lawful for purposes of that section.

(3) In order for an alien to establish a domicile in the United States, he must be physically present in this country and have the intention of residing here permanently or indefinitely; for that domicile to be considered lawful within the meaning of section 212(c) of the Act, the alien's presence in the United States must be lawful within the meaning of this country's immigration laws.

(4) The Immigration and Nationality Act sanctions the continuing presence in this country of but one class of aliens other than those lawfully admitted for permanent residence, namely, non-immigrants in compliance with the terms and conditions of their admission.

(5) Government action or policy to refrain from instituting deportation proceedings against an alien or enforcing his deportation notwithstanding, an alien in breech of the terms and conditions of his nonimmigrant status remains in the United States at the sufferance of the Government, not under any lawful status accorded him by the Act.

(6) A nonimmigrant crewman who complied with the conditions of his admission and did not intend to remain in this country beyond the fixed period of his temporary stay may not establish that he was "domiciled" here during the time his stay as a nonimmigrant was authorized under our immigration laws; conversely, if the nonimmigrant crewman did intend to make the United States his permanent home and domicile, he was in violation of the conditions of his admission and was not here "lawfully."

Number 2879-Matter of Wojtkow. In Deportation Proceedings, A13 934 122. Decided by BIA, Sep. 10, 1981.

(1) Pursuant to section 125.15(1) of the Penal Law of New York, a person is guilty of manslaughter in the second degree when "he recklessly causes the death of another person."

(2) A person acts "recklessly" when he is aware of and consciously disregards a substantial and unjustifiable risk, which constitutes a gross deviation from the standard of conduct a reasonable person would observe in the situation. New York Penal Law, section 15.05(3).

(3) A conviction for second degree manslaughter under section 125.15(1) of the Penal Law of New York is a crime involving moral turpitude. *Matter of Medina*, 15 I&N Dec. 611 (BIA 1976), *followed; Matter of Gantus-Bobadilla*, 13 I&N Dec. 777 (BIA 1971), *modified.*

Number 2880-Matter of Berdouille. In Visa Petition Proceedings, A-24652753 & A-24652754. Decided by BIA, Sep. 22, 1981.

(1) In order to be eligible for relative preference classification under section 203(a) of the Immigration and Nationality Act, 8 U.S.C. 1153(a), the alien beneficiary must be fully qualified at the time the visa petition is filed.

(2) Visa petitions to classify the beneficiaries as "unmarried sons" under section 203(a)(2) of the Act are denied where the beneficiaries' alleged legitimation by their petitioner father occurred only after he filed the petitions and, therefore, they were not fully qualified as the petitioner's legitimated children under section 101(b)(1)(C) of the Act, 8 U.S.C. 1101 (b)(1)(C), at the time the visa petitions were filed.

Number 2881-Matter of Colley et al. In Visa Petition Proceedings, PHI-N-8302-8305. Decided by Commr., June 19, 1981.

(1) Beneficiaries, employed as aerial survey pilot, survey pilot/navigator, aerial photographer, and aerial camera operator, possessed the requisite "specialized knowledge" within the meaning of section 101(a)(15(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15(L), to be classified as intracompany transferees because their skills were necessary to operate the unique and unusually sophisticated aeriel photography and computerized navigational system developed by the Canadian parent company. The petitioner has also demonstrated that all four beneficiaries have been employed by the parent company in excess of one year and that their services are essential for the successful operation of this particular equipment.

(2) In *Matter of Raulin*, 13 I&N Dec. 618, and *Matter of LeBlanc*, 13 I&N Dec. 816, the occupations did not inherently qualify the beneficiaries and the Service looked for elements beyond general job tasks and duties for the specialized knowledge related to the proprietary interests of the business, its management, and concerned skills or knowledge related to the proprietary interests of the business, its management, and concerned skills or knowledge not readily available in the job market.

(3) Specialized knowledge must be relevant to the business itself and directly concerned with the expansion of commerce or it must allow a busi-

ness to become competitive in overseas markets. *Matter of Michelin Tire Corporation*, Interim Decision 2758.
(4) Most employees today are specialists and have been trained and given specialized knowledge; however, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees.

Number 2882-Matter of Mourillon, In Visa Petition Proceedings, A-19731000. Decided by BIA, Sep. 22, 1981.
(1) Under the law of Curacao, Netherlands Antilles, legitimation of a child born out of wedlock is effected by the subsequent marriage of the natural parents together with their prior or contemporaneous acknowledgment of the child.
(2) An act of acknowledgment of paternity in Curacao without the marriage of the natural parents does not place the acknowledged child in the same status as a legitimated child and, therefore, the petitioner did not quality as his father's "child" under section 101(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(C).
(3) In order to qualify as stepsiblings, either (1) the marriage which created the step-relationships must continue to exist, or (2) where the parties to that marriage have legally separated or the marriage hes been terminated by death or divorce, a family relationship must continue to exist as a matter of fact between the "stepsiblings."
(4) Since the petitioner and beneficiary once qualified as "children" of their stepmother/mother and continue to maintain their family relationship, the beneficiary qualifies as the petitioner's "sister" under section 203(a)(5) of the Act, 8 U.S.C. 1153(a)(5), even though the record does not show whether the petitioner's father and the beneficiary's mother are still alive and remain married.

Number 2883-Matter of M/V "Runaway", In Fine Proceedings, MIA 10/12.1222. Decided by BIA, Oct. 2, 1981.
(1) Section 273(a) of the Immigration and Nationality Act, 8 U.S.C. 1323(a), in effect, makes the carrier of aliens an insurer that his passengers have met the visa requirements of the Act.
(2) Cuban nationals who came to the United States in the "Freedom Flotilla" of 1980 without first having filed Form I-590 (Registretion for Classification as a Refugee) and having received approval for admission as refugees under section 207 of the Act, 8 U.S.C. 1157, are not exempt from the Act's visa requirements by virtue of the provisions of the Refugee Act of 1980.
(3) Since liability for fines under section 273(a) of the Act is determined as of the time the aliens are brought to the United States, it does not matter whether the aliens are subsequently admitted to the United States by the Attorney General.
(4) Reasonable diligence within the meaning of the remission provisions of section 273(C) of the Act is not established by carrier's statement that he relied on a presidential "open hearts and open arms" speech in deciding to go to Cuba where the evidence shows that he departed for Cuba prior to the speech and where the presidential speech cannot be reasonably construed as a waiver of visa requirements or as authority for bringing undocumented aliens to the United States.
(5) Reasonable diligence within the meaning of the remission provisions of section 273(C) of the Act is not established where the evidence does not support carrier's allegation that he believed that the visa requirements were waived under the Refugee Act of 1980.
(6) Reesonable diligence within the meaning of the remission provisions of section 273(C) of the Act is not established where carrier's only evidence in support of his contention that he relied on announcements of the Immigration and Naturalization Service and other federal agencies in deciding to go to Cuba was an affidavit which wes factually insufficient and, therefore, not credible.

Number 2884-Matter of Ramirez-Rivero. In Exclusion Proceedings, A-232224918. Decided by BIA, Oct. 5, 1981.
(1) In order for a foreign conviction to serve as a basis for a finding of inadmissibility, the conviction must be for conduct deemed criminal by United States standards.
(2) An act of juvenile delinquency is not a crime in the United States and an adjudication of delinquency is not a conviction for a crime within the meaning of the Immigration and Nationality Act.
(3) The standards established by Congress, as embodied in the Federal Juvenile Delinquency Act (FJDA), 18 U.S.C. 5031 *et seq.*, as amended by the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, 88 Stat. 1133 (effective September 7, 1974), govern whether a foreign offense is to be considered a delinquency or a crime by United States standards.
(4) The FJDA defines a "juvenile" as "a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday," and "juvenile delinquency" as "the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult." 18 U.S.C. 5031.
(5) Pursuant to section 5032 of the FJDA, 18 U.S.C. 5032, any juvenile within the jurisdiction of the federal courts alleged to have committed an act of juvenile delinquency while under 16 years of age is not subject to criminal prosecution as an adult, regardless of the nature of the offense or the potential punishment, but rather is entitled to benefit from the protective and rehabilitative provisions of the FJDA unless he waives his right, in writing upon advice of counsel, to such treatment.
(6) Inasmuch as the Board will not presume that a juvenile would opt to forego his right to be proceeded against as a delinquent in favor of criminal prosecution, the applicant's breaking and entering theft committed when he was 13 years of age, though treated as a crime in Cuba, may not as a matter of law be deemed criminal by United States standards and therefore is not an excludeble offense under section 212(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9). ■